

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Cuyahoga County Sheriff's Department,

Employer.

Case No. 2002-ULP-06-0453

**ORDER
(OPINION ATTACHED)**

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
February 27, 2003.

On June 27, 2002, the Ohio Patrolmen's Benevolent Association ("OPBA") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the Cuyahoga County Sheriff's Department ("Respondent") violated Ohio Revised Code Sections 4117.11(A)(1) and (2). On August 15, 2002, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On October 24, 2002, the parties waived a hearing and submitted the case on joint stipulations and briefs. On January 9, 2003, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent violated Ohio Revised Code Sections 4117.11(A)(1) and (2) by refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible to vote in a pending representation election. No exceptions were filed to the Proposed Order.

After reviewing the record, the Proposed Order, and all other filings in this case, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, incorporated by reference; issue an order, with a Notice to Employees, to the Cuyahoga County Sheriff's Department to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from initiating, creating, dominating, or interfering with the formation or administration of an employee organization, by refusing to provide a numbered, alphabetized list of the names and home addresses for the employees who are eligible to vote in a pending representation election, and from otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(2); and order the Cuyahoga County Sheriff's

Order
Case No. 2002-ULP-06-0453
February 27, 2003
Page 2 of 2

Department to post for sixty days, in all the usual and normal posting locations where bargaining-unit employees work, the Notice to Employees furnished by the State Employment Relations Board and to notify the State Employment Relations Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

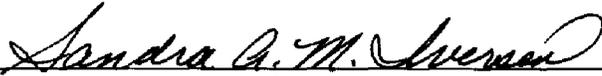
DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CAROL NOLAN DRAKE, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 11th day of March, 2003.



SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT
RELATIONS BOARD AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the State Employment Relations Board and abide by the following:

The Cuyahoga County Sheriff's Department is hereby ordered to:

A. Cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible for a pending representation election, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
2. Initiating, creating, dominating, or interfering with the formation or administration of an employee organization by refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible for a pending representation election, and from otherwise violating Ohio Revised Code Section 4117.11(A)(2).

B. Take the following affirmative action:

1. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees work, the Notice to Employees furnished by the State Employment Relations Board stating that the Cuyahoga County Sheriff's Department shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
2. Notify the State Employment Relations Board in writing twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

SERB v. Cuyahoga County Sheriff's Department, Case No. 2002-ULP-06-0453

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD,	:	
	:	CASE NO. 02-UJP-06-0453
Complainant,	:	
	:	
and	:	
	:	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION,	:	BETH C. SHILLINGTON
	:	ADMINISTRATIVE LAW JUDGE
Intervenor,	:	
	:	
v.	:	
	:	
CUYAHOGA COUNTY SHERIFF'S DEPARTMENT,	:	
	:	<u>PROPOSED ORDER</u>
Respondent.	:	

I. INTRODUCTION

On June 27, 2002, the Ohio Patrolmen's Benevolent Association ("OPBA") filed an unfair labor practice charge with the State Employment Relations Board ("SERB") alleging that the Cuyahoga County Sheriff's Department ("Employer") violated Ohio Revised Code §§ 4117.11(A)(1) and (2) by refusing to provide the alphabetized election eligibility list containing names and home addresses.¹ On August 15, 2002, SERB found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On July 23, 2002, SERB conducted a secret ballot election for certain employees of the Employer. On July 26, 2002, the OPBA filed post-election objections in Case No. 02-REP-03-0062. On September 4, 2002, SERB directed the election objections to hearing, coordinated the representation and unfair labor practice cases, and expedited the proceedings.

On October 24, 2002, the parties submitted both cases on Stipulations of Fact and Exhibits. Subsequently, all parties filed post-hearing briefs.

¹All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117.

II. ISSUES

1. Whether, by refusing to provide a numbered alphabetized list of the names and home addresses of employees who are eligible for a pending representation election, through the acts and conduct described above, the Employer is interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Chapter 4117, in violation of § 4117.11(A)(1).
2. Whether, by refusing to provide a numbered alphabetized list of the names and home addresses of employees who are eligible for a pending representation election, through the acts and conduct described above, the Employer is initiating, creating, dominating, or interfering with the formation or administration of an employee organization in violation of § 4117.11(A)(2).

III. FINDINGS OF FACT²

1. The Cuyahoga County Sheriff's Department is a "public employer" as defined by § 4117.01(B). (S. 1)
2. The Ohio Patrolmen's Benevolent Association is an "employee organization" as defined by § 4117.01(D). (S. 2)
3. The United Auto Workers-Region 2, Local 70 ("UAW") is an "employee organization" as defined by § 4117.01(D). (Complaint, ¶ 5; Answer, ¶ 5)
4. On March 23, 2002, the OPBA filed a Petition for Representation Election – Employee Organization ("Petition") with SERB, seeking to replace the incumbent employee organization, UAW, as the exclusive representative for the bargaining unit of the Employer's Corrections Corporals. (Complaint, ¶ 5; Answer, ¶ 5; S. 3; Jt. Exh. A)
5. SERB notified the Employer of the Petition through correspondence dated April 3, 2002. The correspondence requested that not later than April 17, 2002, the

² All references to the Stipulations of Fact are indicated parenthetically by "S.," followed by the stipulation number. All references to the Joint Exhibits are indicated parenthetically by "Jt. Exh.," followed by the exhibit number. References to the stipulations and/or exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

Employer provide an alphabetized, numbered list of employees in the proposed bargaining unit to SERB and the other parties pursuant to Rule 4117-5-04(C). On April 15, 2002, an alphabetized, numbered list of Corrections Corporals was transmitted to SERB, the OPBA, and the UAW. (S. 4-7; Jt. Exhs. B, C)

6. On April 30, 2002, SERB transmitted a Consent Election Agreement to the parties, asking that it be returned by May 7, 2002. Paragraph 3 of the Consent Election Agreement states as follows:

Pursuant to Ohio Administrative Code Rule 4117-5-07, the employer shall file with the Board and serve on the parties an accurate alphabetized, numbered list of eligible voters' names and home addresses. The list shall be filed by the earlier of these two dates: (1) ten days after the Board issues the direction to election, or (2) ten days prior to the election.

(S. 8; Jt. Exh. D)

7. The Employer and the UAW negotiated a successor collective bargaining agreement that was executed on May 7, 2002. (Complaint, ¶ 6; Answer, ¶ 6)
8. On May 23, 2002, SERB issued and served on the parties a Direction to Election, and on June 4, 2002, SERB issued and served on the parties a corrected Direction to Election. Each document stated, in relevant part, as follows:

The election shall be held at a date, time, and place to be determined by the Representation Section in consultation with the parties. No later than June 3, 2002, the Employer shall serve on each Employee Organization and file with the Board a numbered, alphabetized election eligibility list setting forth the names and home addresses of all employees eligible to vote as of May 23, 2002.

(S. 9-10; Jt. Exhs. E, F)

9. On June 6, 2002, SERB mailed the Employer's attorney a letter stating, in part, as follows:

The directive states that the Employer shall serve on each Employee Organization and file with us a numbered alphabetized election eligibility list no later than June 3, 2002. We have not received the list. You must file the list no later than June 14, 2002.

(S. 11; Jt. Exh. G)

10. On June 24, 2002, SERB notified all parties that the election would be held on July 11, 2002. The correspondence from SERB indicated that SERB would use "the alphabetized list of employees as provided by the Employer dated April 15, 2002." (S. 12-13; Jt. Exh. H)
11. On June 25, 2002, the OPBA filed an unfair labor practice charge with SERB. The charge concerned the Employer's failure to file and serve an eligibility list containing an alphabetized list of names and home addresses of those eligible to vote in the election. (S. 14; SERB Case No. 02-ULP-06-0453)
12. On June 26, 2002, the Employer's counsel wrote a letter to SERB outlining the Employer's objections to the upcoming election. (S. 15; Jt. Exh. I)
13. On July 10, 2002, SERB notified the parties that the July 11, 2002 election was postponed. (S. 16; Jt. Exh. J)
14. On July 11, 2002, SERB notified the parties that the election was rescheduled to July 23, 2002, and that SERB would use "the alphabetized list of employees as provided by the Employer dated April 15, 2002." (S. 17; Jt. Exh. K)
15. The election was held on July 23, 2002. Of thirty-six (36) eligible voters, twenty (20) ballots were cast. The OPBA received four (4) votes, the UAW received fifteen (15) votes, and No Representative received one (1) vote. (S.18)
16. On July 25, 2002, the OPBA timely and properly filed post-election objections. (S. 19)
17. On September 5, 2002, SERB directed the post-election objections to an evidentiary hearing and coordinated the representation proceeding with the unfair labor practice case. (S. 20)

IV. ANALYSIS AND DISCUSSION

Section 4117.11 provides in relevant part as follows:

- (A) It is an unfair labor practice for a public employer, its agents, or representatives to:
 - (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an

employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;

- (2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system[.]

When a violation of § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective rather than subjective one. SERB must determine whether, under all the facts and circumstances, one could reasonably conclude that employees were restrained or coerced, or that their rights under § 4117.03 had been interfered with, by the Respondent's conduct. This objective inquiry is used whether the alleged misconduct is a change in status quo, interrogation about union activity, or some other alleged interference with rights protected under Chapter 4117. Proper consideration of any § 4117.11(A)(1) allegation must necessarily entail a thorough review of the circumstances under which the alleged misconduct occurred and its likely effect on the guaranteed rights of employees. In re Pickaway County Human Services Dept., SERB 93-001 (3-24-93).

The question presented is whether the Employer violated § 4117.11(A)(1) when it failed to provide the election eligibility list required by SERB's administrative rules governing elections. Rule 4117-5-07 provides as follows:

- (A) After the board directs an election, the employer shall file with the board and serve upon each party to the election an alphabetized numbered election eligibility list containing the names and home addresses of all eligible voters. Unless otherwise directed by the board, the eligibility list must be filed and served by the earlier of these two dates:
 - (1) Ten days after the board issues the direction of election; or
 - (2) Ten days prior to the commencement of the election.
- (B) The board may require the employer to arrange the list according to polling sites or in any other manner which it deems appropriate.
- (C) Failure to object in writing to the board to the form or content of the election eligibility list prior to the commencement of an election shall

constitute a waiver of the objection if the objecting party knew of the defect prior to the election, or through the exercise of reasonable diligence should have known.

- (D) At any time prior to or during the pre-election conference, the parties may jointly agree in writing to additions to or deletions from the eligibility list.
- (E) If the employer fails to timely file a proper eligibility list, the board may, at its [sic] discretion, compile a list from any sources available to it.

The parties do not dispute that the Employer never produced a numbered alphabetized election eligibility list containing the names and home addresses of all eligible voters. The Employer's refusal to produce this list cannot be attributed to inadvertence. SERB provided the Employer with written notice of this requirement on four separate occasions: (1) the Consent Election Agreement (Jt. Exh. D); (2) the Direction to Election (Jt. Exh. E); (3) the Corrected Direction to Election (Jt. Exh. F); and (4) SERB's June 6, 2002 letter to the Employer's legal counsel (Jt. Exh. G). Moreover, the OPBA objected in writing, as contemplated by Rule 4117-5-07(C), to the Employer's refusal to provide the election eligibility list when the OPBA filed this unfair labor practice charge with SERB on June 27, 2002.

In In re Lake County Engineer, SERB 86-046 (11-20-86) ("Lake County"), 1984-86 SERB 343, SERB addressed the issue of whether an employer's refusal to provide an election eligibility list to the incumbent employee organization before a decertification election warranted setting aside the election. In setting aside the election and directing a rerun election, SERB stated in relevant part as follows (emphasis added):

The Employer admits that no eligibility list was served on the Employee Organization, but contended that this failure was not prejudicial to the Employee Organization because it was the incumbent exclusive representative and knew the names and addresses of all the eligible employees in the bargaining unit. * * *

The obligation imposed on the Employer by Ohio Administrative Code Rule 4117-5-07(A) to furnish each party an alphabetized election eligibility list is explicit. It provides for no exemptions or exceptions and is not dependent on the showing of an Employee Organization's need for such information. The Employer's reliance on the assumption that the Employee Organization knew the names and addresses of all eligible employees was wrong. If any assumption is to be made, it is that every name and every address on the roster of eligible employees is not necessarily known to the

Employee Organization. *The eligibility list is an integral part of the elections process and the purpose of the list is to facilitate that process. It is essential to the fair conduct of the election procedure.* The Employer erred by ignoring the requirement of Ohio Administrative Code Rule 4117-5-07(A).

Lake County, supra at 344 (emphasis added).

The Employer's primary argument is that it was excused from furnishing a proper election eligibility list because, notwithstanding the lack of such a list, SERB held the election. In so doing, SERB exercised the discretion afforded it under Rule 4117-5-07(E) and "compile[d] a list from any sources available to it," specifically, the alphabetized, numbered list the Employer furnished to SERB when SERB undertook its initial investigation of the OPBA's Petition. But SERB's exercise of its discretion can in no way be considered an excusal of the Employer's failure to follow the rules. SERB's Lake County decision strictly enforcing the requirement that a proper election eligibility list be furnished is supported by an analysis of the underlying reason for the requirement: ensuring that the affected employees are provided with information necessary for free and fully informed exercise of their statutory right to vote. The National Labor Relations Board ("NLRB") has an analogous requirement, which has been upheld and enforced by the United States Supreme Court. NLRB v. Wyman-Gordon Co. (1969), 394 U.S. 759. In North Macon Health Care Facility (1994), 147 L.R.R.M. 1185 ("North Macon"), the NLRB reviewed the significant policy concerns underlying this requirement.

The NLRB, like SERB, has the responsibility to ensure that elections are conducted free from interference, restraint, or coercion, or any other elements that prevent or impede a free and reasoned choice. Among the factors that undoubtedly tend to impede such a choice is lack of information about one of the choices available. "An employee who has had an effective opportunity to hear the arguments concerning representation is in a better position to make a more fully informed and reasonable choice." North Macon, 147 L.R.R.M. at 1186 (quoting Excelsior Underwear, Inc. (1966), 156 N.L.R.B. 1236, 1241 ("Excelsior"). The election eligibility list provides employee organizations with the ability to reach all employees with its arguments in favor of representation. "This is not, of course, to deny the existence of various means by which a party *might* be able to communicate with a substantial portion of the electorate even without possessing their names and addresses. It is rather to say what seems to us obvious--that the access of *all* employees to such communications can be insured only if all parties have the names and addresses of all the voters." North Macon, supra at 1187 (quoting Excelsior) (emphasis in original).

SERB has already discussed the importance of the eligibility list. "The eligibility list is an integral part of the elections process and the purpose of the list is to facilitate that process. It is essential to the fair conduct of the election process." Lake County, supra. The NLRB has held that "an employer's failure to provide a complete and accurate list of

eligible voters is an injury to *employees*, not just to [employee organizations]: an incomplete or inaccurate list can effectively prevent employees from obtaining information necessary for the free and fully informed exercise of their [statutory] rights.... “[T]he potential harm from list omissions is deemed sufficiently great to warrant a strict rule that encourages conscientious efforts to comply.” North Macon, supra (emphasis in original) (quoting Excelsior, 156 N.L.R.B. at 1244).

Viewed objectively in accordance with the foregoing factual and legal circumstances, it can only be concluded that the Employer violated § 4117.11(A)(1) when it refused to furnish the election eligibility list. The employees’ rights under Chapter 4117 were interfered with and restrained when they were denied an effective opportunity to hear the OPBA’s reasons for representation and, thus, to cast informed ballots in the representation election. The Employer also violated § 4117.11(A)(2) by interfering with the OPBA’s efforts to contact the affected employees about forming an OPBA-affiliated employee organization.

V. CONCLUSIONS OF LAW

1. The Cuyahoga County Sheriff’s Department is a “public employer” as defined by § 4117.01(B).
2. The Ohio Patrolmen’s Benevolent Association is an “employee organization” as defined by § 4117.01(D).
3. The United Auto Workers-Region 2, Local 70 is an “employee organization” as defined by § 4117.01(D).
4. By refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible to vote in a pending representation election, through the acts and conduct described above, the Cuyahoga County Sheriff’s Department is interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Chapter 4117, in violation of § 4117.11(A)(1).
5. By refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible to vote in a pending representation election, through the acts and conduct described above, the Cuyahoga County Sheriff’s Department is initiating, creating, dominating, or interfering with the formation or administration of an employee organization in violation of § 4117.11(A)(2).

VI. RECOMMENDATIONS

It is respectfully recommended that:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board issue an **ORDER** pursuant to § 4117.12(B), requiring the Cuyahoga County Sheriff's Department to do the following:

A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible for a pending representation election, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
- (2) Initiating, creating, dominating, or interfering with the formation or administration of an employee organization by refusing to provide a numbered alphabetized list of the names and home addresses for the employees who are eligible for a pending representation election, and from otherwise violating Ohio Revised Code Section 4117.11(A)(2).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees work, the Notice to Employees furnished by the State Employment Relations Board stating that the Cuyahoga County Sheriff's Department shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (2) Notify the State Employment Relations Board in writing within twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT
RELATIONS BOARD AN AGENCY OF THE STATE OF OHIO

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B. Take the following affirmative action:

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2. Notify the State Employment Relations Board in writing twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

SERB v. Cuyahoga County Sheriff's Department, Case No. 2002-ULP-06-0453

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